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IN THE

Supreme Court of the United States

October Term, 1962

No. 1058

ERNESTINE GREENE,
Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE, LOS ANGELES, CALIFORNIA,
Respondent.

PETITION FOR REHEARING

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PETITION FOR REHEARING

Your petitioner, Ernestine Greene, respectfully petitions for rehearing in the above-entitled matter on the following grounds, to-wit:

I.

This Court has overlooked a fundamental and important right of an alien to have the benefit of counsel from an attorney-at-law from the very beginning of her proceedings, the denial of which constituted a denial of rights under the Fifth and Sixth Amendments to the Constitution of the United States. Treaty obligations between the United States and her native country establish those rights.

II.

This Court has not decided, but should decide, a fundamental question of immigration law of great importance inherent in this case regarding a change of court procedure which, in effect, deprived the alien of her full day in court.

This petitioner's order of deportation is based upon two statements taken from her by an immigration officer, virtually in camera, when she had no attorney, friend or advisor present, and such statements form the *sole* basis for the order for her deportation. Her rights to have the advice and benefit of an attorney-at-law from the very beginning of her interrogation inheres in the ordered concept of liberty and that fundamental fairness of which we boast as those rights in a democratic society that are given to all persons in the United States. They are the very basis of the American concept of fundamental fairness.

> *Powell v. Alabama*, 287 U.S. 45, 77 L. Ed. 158;
> *Lisenba v. California*, 314 U.S. 219, 86 L. Ed. 166;
> *Douglas v. California*, 372 U.S. 353, 9 L. Ed. 2d 811.

While these are criminal cases, the result of deportation is as serious, or even more serious, than prosecution and conviction of a crime. Is the Circuit Court decision in this case the first of its kind—to be the rule

regarding aliens, namely—that an immigration officer may take the statements of aliens without the benefit of counsel or without even advising them that they have a right to an attorney and then use the statements thus taken as the sole basis for ejecting them from a country in which they have lived and married an American citizen? Is this what we believe to be an example for the world to see as the concept of American justice extended to all persons in our society?

The transfer of this case and others like it by Congressional fiat deprived the petitioner of due process of law.

At the start of this case the petitioner would have had the right to have presented testimony and evidence and to have a full hearing in the United States District Court. Then by Congressional legislation the case was transferred to the Circuit Court of Appeals. The Circuit Courts are courts of appeal and not of trial, and do not afford opportunities to take testimony, to see witnesses, to observe their demeanor and to reach a factual conclusion based upon examination, cross-examination and observation of witnesses. The statute transferring this case and similar cases to the Court of Appeals, therefore, deprives aliens of a day in court which, in this case, is guaranteed by treaty between the United States and petitioner's native country, Austria.

It is no answer to say that she has had a day in an appellate court, which does not hear witnesses or see them or make factual determinations based upon normal proceedings accorded to an American citizen in declaratory relief actions and in all district court proceedings. Therefore, it has deprived, and does deprive the petitioner of due process and equal protection of the laws guaranteed by the Fifth Amendment to the Constitution of the United States.

We think that this Court, in its closing days, has overlooked these fundamental and important questions inherent and involved in this case and which have not been passed upon heretofore by this Honorable Court in any immigration case that we can find.

We therefore respectfully petition for rehearing and for reversal of the judgment and orders below.

Respectfully submitted,

MORRIS LAVINE,
Attorney for Petitioner.

CERTIFICATE OF COUNSEL

I, Morris Lavine, hereby certify that the foregoing petition for rehearing is filed in good faith and not for the purpose of delay and that it is based upon matters of fundamental importance which have not been, but should be, decided by this Honorable Court, as set out in this petition for rehearing, and is confined to those points.

MORRIS LAVINE.